IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9555 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE JUDICIAL DEPARTMENT CLASS III EMPLOYEES

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9555 of 2002

MR DIPAK R DAVE for Petitioner No. 1-2

MR. MUKESH PATEL, AGP for Respondent No. 1

MR JB PARDIWALA with Mr.S.N.Shelet, ld. Advocate General for Respondent No. 2

MR LR PUJARI with Mr.Asim Pandya, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 16/07/2004

ORAL JUDGEMENT

1. The petition is filed by the Gujarat State

Judicial Department Class III Employees' Federation and Gujarat State Judicial Stenographers'/PAs' Association through their General Secretary for a declaration that the action on the part of the respondents in providing the age limit of 35 years' for the staff members for making an application for appointment to the post of Civil Judge (Junior Division) and Judicial Magistrate, First Class is illegal, unjust and improper being violative of the Rules, it is also prayed that it may be declared that the respondents have no authority to reduce the said age limit from 45 years to 35 years. The petitioners have also prayed for a direction to the effect that the age limit of 35 years prescribed for the members of the petitioners for making an application for the post of Civil Judge (J.D.) and J.M.F.C be removed. One of the reliefs prayed for by the petitioners is that the respondents be directed to consider the case of all the members of the petitioners who are otherwise qualified for the aforesaid post upto the age of 45 years. An amendment is also prayed for in the advertisement by which the applications were invited for the post of Civil Judge (J.D.) and J.M.F.C., so that, if otherwise, the members of the petitioners are entitled can apply up to the age limit of 45 years.

1.1 Alternatively, it is prayed that the respondents be directed to dispense with the requirement of experience of five years.

2. The facts of the case are that respondent no.2-Registrar, High Court of Gujarat caused an advertisement on September 2, 2002 inviting applications for the preparation of the waiting list of candidates for 225 posts including 42 posts reserved for Scheduled Castes and 16 posts reserved for Socially and Educationally Backward Class candidates. In the said advertisement, it is mentioned that essential qualifications for the candidates who are working in Courts or other allied departments will be, "(a) He must have experience of 5 years. (b) He must not have attained the age of 35 years."

2.1 It is this prescription of the experience of 5 years and the upper age limit of 35 years has brought the present petition.

3. Mr. Dave, learned Advocate for the petitioners strenuously contended that the respondents could not have prescribed the said age limit as under the Gujarat Judicial Service Recruitment Rules, 1961, Rule 5 provides for method of recruitment of Class II of Junior Branch.

In sub-rule (3A), it is provided that,

"appointment shall be made from amongst candidates who, being;
(i) members of the staff of the High Court or any Court subordinate to it,
(ii) .....
(iii) .....
(iv) .....
(a) are not more than 45 years, and
(b) have obtained the LL.B (special) Degree or qualified for enrolment as Advocate and served as such member for a period of not less than five years, including not less than two years after obtaining such degree or qualifying for such enrolment,

3.1 The learned Advocate for the petitioners strenuously submitted that these Rules, still hold the field as they are not repealed or rescinded by any other rules, and therefore, it should be held that the advertisement which was issued on 2nd September, 2002 was de hors the Rules, to the extent mentioned hereinabove, and therefore,the reliefs as prayed for are required to be granted.

4. The learned Advocate relied upon a decision of the Honurable the Apex Court in the matter of C.L.VERMA V. STATE OF M.P. and another, reported in AIR 1990 SUOPREME COURT p.463. In support of his contention that, ` when there are statutory rules, the same will prevail over any administrative instruction issued by the authority,' He submitted that applying the same principle in the case on hand, when there are statutory rules, holding the field of recruitment to the Gujarat State Judicial Service, the respondents could not have issued the advertisement on the basis of administrative instructions. The learned Advocate further submitted that the so called draft rules which are sought to be relied upon by the respondents, to justify their action of prescription of requirement of 5 years experience and 35 years as the upper age limit cannot be allowed to stand.

5. The learned Advocate also relied upon a decision of this Court in the matter of AJIT D. PADIVAL v. STATE OF GUJARAT & ORS., 1995 (1) G.L.R. p.889, in support of his submission to the effect that,`it is only the statutory rules which are to prevail, and no deviation can be allowed to the authorities.'

6. On behalf of respondent no.2, the learned

Advocate General appeared with Mr. Pardiwala and supported the action of respondent no.2. He submitted that this is a matter which is not presented in its correct perspective. He submitted that the matter of recruitment to judicial service was governed by the Gujarat Judicial Service Recruitment Rules, 1961. The same were strictly followed by respondent no.2, until the later development in the field, changing the whole scenario. He submitted that the First National Judicial Commission headed by Justice Jagannath Shetty, Former Judge, Supreme Court of India, submitted its detailed recommendations on various aspects. Chapter VIII of the report pertains to Recruitment to the Cadre of Civil Judges, (J.D.) cum Magistrate, First Class. These recommendations are accepted by the Hon'ble the Apex Court in its judgment in the matter of ALL INDIA JUDGES' ASSOCATION AND OTHERS V. UNION OF INDIA AND OTHERS, reported in (2002) 4 SUPREME COURT CASES P.247,wherein the Hon'ble the Apex Court in paragraph 37 has observed as under:

> "Subject to the various modifications in this judgment, all other recommendations of the Shetty Commission are accepted."

The learned Advocate General submitted that on the aspect of `age limit', the Shetty Commission has recommended that, `so far as the direct recruitment of District Judge is concerned, a candidate should be of 35 and 45 years'. Taking clue from the same and justifying its recommendations on more than one ground, it has recommended that, ` the age limit for selection of Civil Judges (J.D.) cannot be beyond 35 years.'

The learned Advocate General submitted that the Hon'ble the Apex Court was conscious of the field being governed by different enactments in different States, and therefore, it observed in the aforesaid matter in paragraph 38 as under:

> "We are aware that it will become necessary for service and other rules to be amended so as to implement this judgment......."

The learned Advocate General submitted that in the State of Gujarat on receipt of the recommendations of the Shetty Commission, and judgment of the Hon'ble the Supreme Court, the matter was considered at the Full Court Meeting and it was decided that a Committee of Five Hon'ble Judges of the High Court be constituted to look into the matter and take appropriate decision. The said

Committee after considering all the recommendations made by the Commission and other relevant factors submitted its report. That report was considered at the Full Court Meeting wherein it was decided to accept the same with certain modifications. The Committee had framed the draft rules on the pattern and guidelines prescribed by the Shetty Commission, and taking into consideration the directions given by the Hon'ble the Supreme Court by the aforesaid judgment. The learned Advocate General further submitted that the decision taken in the matter along with all recommendations is forwarded to the State Government for implementation within the time limit prescribed by the Hon'ble the Apex Court and at present the matter is awaiting consideration from the State Government.

7. The learned Advocate General submitted that thus, from the aforesaid judgment, it is clear that the existing rules are to be amended to bring them in line with the recommendations of the Shetty Commission and the directives of the Hon'ble the Apex Court necessarily mean that the existing rules do not hold the field and have ceased to be operative because they are not in line with the recommendations of the Shetty Commission. He submitted that the draft rules which are prepared so as to comply with the recommendations, even if considered to be `administrative instructions' hold the field.

8. The learned Advocate General relied upon a decision of the Hon'ble the Apex Court in the matter of HIGH COURT OF GUJARAT AND ANOTHER V. GUJARAT KISHAN MAZDOOR PANCHAYAT AND OTHERS, (2003) 4 SUPREME COURT CASES, P.712, wherei the Hon'ble the Apex Court was pleased to hold that, ` the Recruitment Rules, which may be even at their draft stage, can be acted upon. (emphasis supplied). He submitted that it is not the case of the petitioners that the decision of respondent no.2 is mala fide or arbitrary. He further submitted that it is not the case of the petitioners that this decision is taken keeping in mind any particular individual candidate. The decision is taken as a policy decision on account of the recommendations of the Shetty Commission and the same is to be applied uniformly to all the members of the Class represented by the petitioners.

9. The learned Advocate General submitted that so far as the requirement of 5 years' experience from the members of the staff only and prescribing the age limit at par with the fresh graduates does not warrant any consideration. He submitted that staff members on one hand and fresh Law Graduates on the other constitute two

distinct classes and do not have anything in common. The staff members have already selected their career and they are in service. An opportunity to apply for judicial service is only an additional avenue which is made available to them to improve upon their career. This can not be equated with `regular promotional channel', available in their service career. He submitted that, in fact, what is important is that, the judicial service shall get the candidates of high quality, and that is why, it is provided that fresh law graduates, practising Advocates and the staff members all can compete. To make the field wide open for selection, aforesaid three categories are provided as feeding channel for the recruitment to the judicial service, The learned Advocate General submitted that Article 14 can not be made applicable and members of these three categories cannot claim an equal treatment in the matters of age and experience. At this juncture, learned Advocate General invited the attention of the Court to the factors which were considered by the Shetty Commission while prescribing the age limit. These factors are incorporated in paragraph 8.40 to 8.45 which are reproduced for ready reference:

"8.40 While recommending the maximum age for recruitment of Civil Judges (Jr.Divn.), it is necessary to bear in mind the maximum age suggested by the Commission for direct recruitment of District Judges. There, we have indicated that the candidates should be between 35 and 45 years. Therefore, it is not proper to prescribe any age beyond 35 for selection to Civil Judges (Jr.Divn.).

8.41 Generally, persons with uninterrupted education would be able to graduate themselves at 21 years and complete the three years law degree course by 24 years. If we insist three more years of practice as a pre-condition for recruitment, then, they would be completing that period by 27 years. But this may be possible only for urban students. The rural students will have their own inherent disadvantage. We have, therefore, to give some more margin while fixing the maximum age.

8.42 Secondly, every year, there is no recruitment to the Civil Judge (Jr. Divn.) cadre. Advocates may have to wait for the advertisement for a couple of years after completing the three years Bar practice.

8.43 Having regard to all these facts and circumstances, it seems to us that the candidate for recruitment in terms of age must be below 35 years. He will then have reasonable period of 25 years of service.

8.44 We accordingly suggest to all States and High Courts to fix 35 years as the maximum age for eligibility for selection to the cadre of Civil Judges(Jr.Divn.) with relaxation by 3 years for SC/ST candidates.

8.45 It is not necessary to prescribe any minimum age in this regard."

He submitted that the Shetty Commission was alive to the aspect of making the zone of selection wide enough, and therefore, it made a recommendation contained in paragraph 8.76 whereby it suggested that even the staff members of not only the Courts but also of other allied departments may also be considered by making suitable provision for the same. Paragraph 8.76 reads as under:-

"8.76 We are of opinion that it will be useful to extend the zone of selection to law graduates who are working in Courts and other allied departments. They acquire sufficient knowledge of law and procedure. Since we are suggesting intensive Institutional Training for about one year, such candidates could be properly shaped to become good judicial officers. We suggest that the law graduates with sufficient experience in service and within certain age limit both are to be prescribed by the respective High Court, could be made eligible for selection to the cadre of Civil Judge (Jr. Divn.)

10. From the aforesaid discussion,it is clear that the challenge posed by the petitioners to the age limit prescribed, and the experience which is called for is without any substance. The statutory rules of 1961 do not hold the field in view of recommendations made by the Shetty Commission which are accepted by the Hon'ble the Apex Court. The draft rules which are prepared to implement the recommendations of the Shetty Commission though at the `DRAFT' stage will hold the field.

11. In the result, the petition fails. Rule is discharged with no order as to costs.

(Ravi R.Tripathi,J.)

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